THE NEW-YORK

CITY-HALL RECORDER.

VOL. V. *June*, 1820. NO. 6.

At the SITTINGS, holden at the City Hall of the City of New-York, on the 14th day of June, in the year of our Lord one thousand eight hundred and twenty—

BEFORE

The Honourable
JOSEPH C. YATES, *one of the Justices of the Supreme Court.*
McKESSON, *Clerk.*

(PRIVATE FRAUD—ATTORNEY—VARIANCE.)

GEORGE W. NIVEN'S CASE.

VAN WYCK and OGDEN, *Counsel for the prosecution.*
EMMET, HOFFMAN, RIKER, ANTHON and PRICE, *Counsel for the defendant.*

Where an indictment at common law alleged a fraud of a private nature, committed by an Attorney, though not in that capacity, it was held that the indictment could not be maintained.

An indictment stated in effect, that an Attorney advised his client to confess a judgment to save his property from other claims; and after such judgment had been confessed by the client, in favour of such Attorney and others, and entered up by him, that he caused the property to be sold on the execution, and bid off for his own benefit, at an inadequate sum; and that he kept the property and converted it to his own use. It was held that such charge was insufficient to support a criminal prosecution, and that the act constituting the *gravamen* of the charge, was not done by the Attorney, in his official capacity.

Though a judge at *nisi prius* may not undertake to quash an indictment sent down by the Supreme Court, to be tried before him, yet he will refuse to hear evidence, affecting the moral character of an individual, on a particular count, which does not contain a criminal offence.

Though it is a rule that a man shall be estopped from impeaching a judgment confessed by himself, yet the rule does not apply to a criminal case, wherein the judgment is alleged to have been obtained fraudulently by a third person.

An indictment alleged, that a bond was conditioned for the payment of $657; but the condition was for the payment of that sum *with interest*, it was held that this variance was fatal.

The defendant was indicted in the court of Sessions, during the term of November, 1819. The indictment was removed into the Supreme Court by certiorari, and sent down to be tried at *Nisi prius*.

The indictment, which was very voluminous, contained four counts. The first, stated in effect, that on the 17th of June, 1819, Robert Latimer being indebted to several persons named in the indictment, (among whom was Isaac Classon, who had sued him for $10,000) and being in possession of personal property, enumerated in the indictment, comprizing certain furniture belonging to Josephine Holman, an infant, and grandchild of Latimer; he employed the defendant, an Attorney of the Supreme Court, to aid him with his advice and counsel: that the defendant, on being admitted an Attorney, had taken an oath, which is set forth in the indictment: but, contriving and fraudulently designing to cheat and defraud Latimer, to get possession of said goods, and also those of said Josephine; and, by reason of being employed, becoming acquainted with the secrets of Latimer, the defendant, corruptly, deceitfully, and collusively advised him to execute a judgment bond, to be entered up in the Supreme Court, as the defendant pretended, to secure the goods from Classon's demand, and for the said Josephine's benefit. Defendant, having obtained Latimer's assent, drew up a bond and warrant, in favour of four obligees, named in the indictment; himself, the defendant, being one of them: that the bond was in the penal sum of $1314, conditioned for the payment of $657: that the defendant entered up judgment in the Supreme Court, he being Attorney on record, that he might control the same; and, with the more ease, carry into effect his fraudulent design. Defendant put on file a specification, stating that Latimer was indebted to him $250 on note, whereas neither that sum nor any part of it was due. Defendant issued a *fieri facias*, by

virtue whereof, the goods were sold by the Sheriff, on the 12th of July, 1819; and at the sale, represented that it was for the purpose of bidding in said goods for said Josephine, by reason whereof, they were sold to Edward McGarighan, the agent of the defendant, for $302; whereas they were worth $3000. Defendant gave the Sheriff a receipt for $302, without paying him any money, and afterwards converted and disposed of them to his own use: and this he did in violation of his oath as Attorney, *against the peace*, &c.

The second count alleged, that Latimer was indebted to a number of *bona fide* creditors, and suits were pending against him; and by the advice and direction of the defendant as his Attorney, did unlawfully give and confess a judgment, to be entered up in favour of the defendant and others named in the indictment, for a certain sum (a part of which, namely, that in favour of the defendant, not being due to him) for the purpose of defrauding those *bona fide* creditors; and under a secret trust, that the judgment should be so managed as to protect the property from their claims, and that it should be held for the said Josephine Holman. The defendant, well knowing the design, received the bond &c. for entering up judgment, *contrary to the form of the statute*, &c.*

The third count did not vary materially from the second, and the fourth related to a transaction, which was not brought in question on the trial.

* "That if any person shall give, confess or execute to another person, any judgment or any bond and warrant of attorney, to enter up a judgment purporting to be for a sum or debt due to the plaintiff, when in fact nothing, or only a part, is due, with intent to defraud the bona fide creditors of such defendant, or to place the property of the defendant out of the reach of such creditors, or to hold the same on some secret trust or confidence, or for the benefit of such defendant, such person shall be and is hereby declared guilty of high misdemeanor, and shall on conviction, before any court of competent authority, be punished by fine or imprisonment, or both, in the discretion of the court, according to the nature and aggravation of the offence; and the person taking or receiving such judgment or bond and warrant of attorney, knowing the fraudulent design and object thereof as aforesaid, shall, on conviction, be punished in like manner." (Laws N. Y. for 1819, p. 119.)

Van Wyck opened the case, on behalf of the prosecution, by detailing the facts he expected to prove.

The Judge expressed his doubts, whether, as this indictment was sent down to be tried at *nisi prius*, like any other issue, it was competent for him, by virtue of the power derived from the statute, to quash the indictment for any defect in form or substance.

Emmet said, that the first count contained a charge, which is not an offence at common law; and the court could not pronounce judgment, should a verdict be obtained. To proceed, therefore, on such a count, would be an idle waste of time.

The Judge said, that had the indictment been bad, the defendant might have demurred, or have moved to quash it at bar; still, he should be loth to try a man on a count which contained no criminal charge.

Price contended, that no *laches* ought to be imputed to the defendant. To have demurred, would have been admitting facts derogatory to his private and professional character. The first count in the indictment, charges a private fraud merely, and for this no criminal prosecution can be maintained.

The Judge called the attention of the counsel to the question, whether a judge, at *nisi prius*, has either the power to quash an indictment, or to seal up one of the counts, and say, "I will not hear any testimony on that count?"

Anthon admitted, that the principal difficulty, in the case, arose under the statute, directing the judge *to try all issues*, sent to him to be tried; but the counsel insisted, that, as the judge had so far the control of issues sent to him to be tried, as to nonsuit the party, or to refuse to hear testimony, under a particular count in a declaration; that he was, necessarily, invested with the same power, in regard to indictments.

To show that a mere fraud, not amounting to a felony, unless of a public nature, was not indictable at common law, he cited 3d Chitty's Crim. Plead. p. 994. 2 Bur. p. 1125, and 6 vol. Mass. Rep. p. 72.

Van Wyck insisted, that the court could not quash a part of the indictment.

He had supposed the opposite counsel were ready to meet this cause on the merits, and that the court would not, on the trial, listen to objections as to the validity of the indictment; but, as the court was disposed to hear, he should give his view of the subject. To show that all misdemeanors of a public nature are indictable, he cited 2 vol. Hawk. p. 301. sec. 4. And to show that peculiar wrongs to individuals, affecting the public interest, are indictable, though no precedent for such an indictment can be found, he cited the case of Noah. (3 vol. of this work. p. 20.)

In the case now before the court, the defendant is charged to have perpetrated this fraud, in his professional capacity, as an attorney at law. Attorneys are public men; and, in their conduct and demeanor to their clients, the public is deeply interested. They are the only avenues between the courts in which they practice, and the people; and in the fidelity and integrity of attorneys towards their clients, the whole community is concerned. A circumvention was here practised, by which this property was legally passed into the hands of the defendant; and should Latimer bring trover, to recover the value, the defendant would laugh him in the face.

Ogden contended that the judge, at *nisi prius*, could try the issues only sent to him to be tried; and that, on principle, the offence charged against the defendant, as an attorney, was as much a crime, as for a grocer to sell by false weights and measures, and far more mischievous.

Riker cited the case of De Costa and Jones, (Cowp. Rep. p. 729.) to show that the court has the power to reject evidence leading to an idle or indecent investigation. That case involved an examination into the sex of the chevalier De Eon, concerning which a bet had been made. Lord Mansfield heard the testimony; but, when the case came before the judges, he expressed his regret that he had done so.

Ogden said, that the only point there decided, was, that the court would not hear indecent evidence; here, we do not ask for the admission of such evidence.

Emmet argued, that it was not on the ground that the evidence was *indecent*, that lord Mansfield regretted that he had heard the testimony in the case of De Costa and Jones, but rather because the investigation affected the character and feelings of a third person. Should a question arise under a will, devising property to a male, would the court refuse to hear testimony, as to his sex, because it would be indecent? But when such an investigation could lead to no beneficial result, then the court must, necessarily, be invested with a sound discretion, in hearing or refusing to hear the evidence. This is the rule prevailing in civil cases, and, *a fortiori*, in criminal.

The counsel next considered, whether this was an indictable offence. It is conceded, that it would not be so, as against a private individual; but it is said that the act, charged in the first count, was done by the defendant, as a public officer. The capacity to practise as an attorney is public; but the particular practice between him and his client, is of a private nature; and, in this transaction, as stated in the first count, there is nothing of a public nature. It is true, that while the defendant was advising the prosecutor to give this judgment, and until it was entered, the transaction, so far, was of an official nature; and then the official acts of the defendant ended. But in that the offence doth not consist; but in selling the property at an inadequate sum, bidding it in for himself, and retaining it; acts which might as well have been done by any other person as by an attorney; and for which, as such, he cannot be responsible.

The counsel further insisted, that the prosecutor had mistaken his remedy. He might either have applied to the supreme court, on affidavit, and relief, if merited, would have been summarily obtained; or the Chancellor, if it appeared that the defendant was but a trustee, would have compelled him to perform his trust.

The counsel concluded by saying, that the object of the defendant, was not to stifle inquiry; but that in raising this objection, he acted on his own

responsibility, without consulting his client.

The Judge stopped further argument, declaring that he had no doubt, from the cases read, that if any count in an indictment contained facts not amounting to a criminal offence, it was his duty to discard all evidence applicable to such count.

It was clearly his opinion, that the offence charged in the first count of the indictment, supposing the transaction to have taken place between private individuals, is not indictable. It is but a fraud of a private nature, not affecting the public; and the only question is, whether the circumstance of the defendants being an attorney, renders this a public offence. In this case, the consummation of the offence, as stated in this count, was not in his official capacity, as an attorney; but it was the same as if done by any other individual. In this point of view, therefore, the facts charged in the first count of this indictment, are not indictable; and the court will hear no evidence applicable to that count.

Ogden excepted to the opinion.

The judgment record, and specification subjoined, and the execution issued and returned, were produced and proved. In the specification, the demands of the three several obligees in the bond were stated, as amounting to $407, and that of the defendant to $250, arising on a promissory note. The judgment was docketed on the 18th of June, 1819, and the execution tested the 15th of May preceding, and returnable the first Monday of August following.

The counsel, for the prosecution, called Robert Latimer, as a witness. Anthon objected to his testimony, so far as it went to impeach the consideration, or any part, upon which this judgment was entered. On its face it imported such verity, that the prosecutor was estopped from impeaching it.

The Judge said, that the rule did not apply: the object did not appear to be to impeach the judgment, but to inquire into the fraud. The consideration of the judgment came up collaterally, and the inquiry was proper.

Latimer, on being sworn, stated that he first became acquainted with the defendant, on a Sunday, by the introduction of Jeremiah I. Drake, Esq. and Dr. Kissam. The witness had been arrested by Isaac Starr Classon, his son in law, for $10,000. Mrs. Latimer had made application to Judge Miller, the surrogate, for letters of guardianship, to protect the grandchild's property. The defendant agreed to appear before the surrogate, as the attorney of the witness, the next day, (Monday) on behalf of Mrs. Latimer, for the child. He demanded $10, as his counsel fee, which was paid. Owing to the low state of health of witness' daughter, the matter was postponed a few days longer. Classon had married the daughter of the witness, who was the widow of Holman, and the mother of Josephine Holman, the child. After the postponement, the defendant charged $25 more, which he demanded as the fees of the court, and said it must be paid that or the next day. He also demanded $25 more, for his own fees, besides the $10, before paid. The witness had no money of his own, but pledged the defendant a gold watch.

The day after this, the witness consulted with the defendant, who requested him to state the persons to whom he owed money, and said that the witness must place confidence in him, and make him a judgment creditor, for the purpose of protecting the property of the child from Classon, and any other creditor.

Anthon objected to the disclosure of any confidential advice, given by counsel to his client. The counsel is not permitted, as a witness, to disclose the secrets of his client; and the rule ought to be reciprocal.

The Judge said, the rule was adopted for the safety and benefit of the client, and not of the counsel; and he overruled the objection.

The witness proceeded to state, that, at this time, he did not owe the defendant a cent, and he said, that he should not charge a cent; and that the witness might tell all New-York so. He said, "I do it for the benefit of the child." He then said, that should Mr. Classon, or any professional man, oppose him, he would make a hole through his jacket,

as he had fought one duel. On being interrogated, the witness stated, that he was not positive that the defendant said he had fought a duel. The witness did not know the amount of the judgment; he left it entirely to the defendant, who told him so to do. The witness signed a paper, and did not know what it was; but understood it was a judgment bond, to secure the property; and, by giving the judgment, that the gentlemen to whom it was given, were to find bail for him in any state where he might be sued.

It was impossible for the witness to state, whether he signed a note; and he did not remember whether he signed two or more papers; but he did not owe the defendant a cent.

Emmet objected to parol evidence of the bond. It should be produced, by the counsel for the prosecution; or, if in the possession of the defendant, a notice to produce it, should have been given.

After argument, the Judge ruled, that the bond should be produced: and that an immediate notice to the defendant to produce it was sufficient.

The bond was produced and proved, by Stephen Baker, the subscribing witness, to have been executed in the defendant's office.

Ogden, (*to the witness, Latimer*) Q. What was the purpose of executing the judgment?

A. To protect the child's property, which was in my possession, from Classon.

Q. Had you been sued by any other creditor?

A. I was sued by Mr. Sandford, over in Jersey, and was arrested there. I owed $150 to one Ross, and to Classon, $600, due at four months.

Though the child's property was at first mentioned, when the judgment bond was given, yet, it was for the purpose of protecting all my property.

The cross examination of this witness was principally conducted by Mr. Price.

It is laid down by most of the elementary writers, on the law of evidence, that the mode of examination, prescribed by the civil law, and adopted in Chancery, that is, by examining witnesses in private, with deliberation, upon interrogatories drawn up with care, is the most conducive in eliciting the truth from an *honest man;* while, on the other hand, that the same end may be better answered, by the common mode, adopted in the courts of common law, when *a knave* is to be examined as a witness. It may be added, in illustration of this remark, that where a witness, regardless of the awful and imperative sanctity of his oath, which is to tell "the truth, *the whole truth*, and nothing but the truth," comes forward in that character, determined *to tell that part only, which is in favour of himself or his friend*, and to conceal the rest, then, if he is not a man of that superior intelligence, presence of mind, and adroitness, which will enable him to baffle all the skill of an experienced advocate in cross examination, to reply with a bold promptness, to see, as it were, by intuition, the final end and bearing of each question, and to shape his answers so as to avoid that inconsistency and contradiction, into which it is sought to draw him, it is better far, for the ends of public justice, that he should be examined, *viva voce*, in open court. The jury ought *to see his manner, and hear* his story; and if he is destitute of those qualifications, and not an honest and conscientious man, very little time will be necessary to form a correct opinion of him and his relation, while cross-examined by a skilful advocate.

It may be, however, justly said, that there are some men of honest hearts, who would not violate or suppress the truth, but, withal, of that timidity as to become confused in relating any simple affair in court, and who might soon be drawn into contradiction and inconsistency, on a cross examination. But this is the case, generally, with young persons, or those advanced in years, who have had little commerce in society; though with many this timid frame of mind seems to be constitutional. But this is soon discoverable; and cruel must that advocate be, who would not rather assist such a witness, by inspiring him with confidence, while under examination, than to endeavour to brow beat and confound him; and wanting in his duty would be the judge, who would suffer such a one to be confounded.

These remarks, it is believed, are

appropriate to the cross examination of Robert Latimer. He appeared to be alarmed at every question propounded by the counsel, on cross examination: he evaded, over and over again, plain and direct questions: he refused to answer some, except *indirectly;* and, as if fearful that a simple affirmation or negation, the plain *yes* or *no*, might prejudice the prosecution, and favour the defendant, this witness frequently evaded a plain inquiry, by running into some story, as foreign to the object of inquiry, as the the east from the west. But whether this was the result of a predetermination *to tell only a part*, or, *from constitutional timidity*, we will not say.

Price: (*to the witness*) Q. When you gave the judgment bond, did you contemplate defrauding your creditors?

A. I wanted to protect the property.

Q. (*repeated in the same words.*)

A. He told me I must place confidence in him: he said, "You must leave all to me, or I will have nothing to do with it."

Q. (*again repeated, with emphasis.*)

A. I placed the greatest confidence in him: if he had presented me a check for $1,000, I should have signed it.

Thus, was the question repeated over and over, and several other times evaded; and, at length, the witness answered, that he did not intend to defraud his creditors!*

In fine, there was no light whatever thrown on the subject from his cross examination. It seemed that horses and carriages, and furniture, which were considered to be in danger from the legal proceedings of Classon and others, were sold, some at private sale, and some on execution; and, after the sale, some of the property was taken away by A B and C, and some suffered to remain. The witness received, principally in the notes of one Pleslin, from the sale of some of the property, about $700; and those notes passed through the hands of the defendant. But the witness could render no satisfactory account of the property owned by himself or the child, nor could he tell its value, or the amount for which it was sold.

Whether the defendant had exercised due discretion in the management of the business, or in what manner the witness had been defrauded, or whether, in truth, he had been, could not be gathered from his testimony. The whole was a chaos:

"Confusion worse confounded."

The Judge expressed his dissatisfaction at this testimony, and asked Van Wyck if he had any other witness. He answered in the affirmative, and was about producing another.

Riker said, that the counsel for the defendant considered it due to his character, to have the principal witness, on behalf of the prosecution, tell his story; though it was impossible, on legal principles, to sustain the prosecution. There was a variance between the indictment and the bond produced in evidence, which he was prepared to show, by authority, to be fatal. The condition of the bond, as set forth in every count of the indictment, is stated to be for the payment of $657; but, it appears from the bond, that it is conditioned for the payment of that sum *with interest.*

The Judge, without hesitation, decided the variance to be fatal, and directed the jury to acquit the defendant.

The Jury acquitted him immediately, without leaving their seats.

MAYOR'S COURT, holden in and for City and County of New-York, in the City-Hall of the said City, on the 24th of June, in the year of our Lord, one thousand eight hundred and twenty, before the Honourable Peter A. Jay, Recorder.

BENJAMIN FERRIS, *Clerk.*

(DAMAGES—IRREGULARITY OF INQUEST—NEWLY DISCOVERED EVIDNCE.)

WILLIAM MULOCK,

vs.

AUGUSTINE N. LAWRENCE.

EMMET & WELLS, *Counsel for the Plaintiff.*
OGDEN & D. S. JONES, *Counsel for the Defendant.*

But see the substance of the allegation in the second count of the indictment: the only count under which the prosecution was attempted to be supported.

Unless the damages rendered on an inquest, for an assault and battery, appear, at first blush, enormous, the court will not interfere.

That a jury, for the purpose of arriving at a measure of damages for an assault and battery, agreed that each should mark down a sum according to his opinion, and then that the amount should be divided by 12, and that the quotient thence arising should be the verdict, is an irregularity sufficient to destroy such verdict; but this cannot be shown by the affidavit of the jurors, and much less from the affidavit of one who heard it from one of them.

An inquest will not be set aside, on the ground of newly discovered evidence, where the witness to the fact relied on, was examined on such inquest, though such fact may not have been elicited.

On the 17th of June, instant, an inquest was taken in this cause before J. L. Bell, Esq. sheriff, and the damages were assessed at $1000. It was an action for an assault and battery, alleged to have been committed by the defendant, on the plaintiff, on the 17th of March last.

The counsel for the defendant moved to set aside the inquest on three grounds:

1. The damages are excessive.

2. The inquest is irregular; for each of the jurors agreed to mark down the sum he thought right, and on adding the several sums, and dividing the amount by twelve, that the quotient arising should be the verdict.

3. Evidence has been newly discovered.

In support of the motion, Jones read the affidavit of the defendant, stating, that on the inquest, John Sidell and Samuel Van Wyck, were sworn, and were the only witnesses for the plaintiff; and that Sidell testified, that on the trial of Goodwin, a chair, within the bar, near the judges' bench, had been assigned by the mayor to and for the plaintiff, to enable him to report the said trial, and that the plaintiff occupied the said chair from day to day during the trial. Van Wyck testified, that on the last day of the trial, and before it began, he was seated on this chair; and that as the judges came into court, or just after they had taken their seats, defendant came to the witness and asked him for the chair for the Recorder or one of the judges, witness could not say which; that witness had no reason to believe that defendant knew that this was plaintiff's chair; that he, the witness, immediately gave the chair to the defendant, who was in the act of handing it up to the bench on which the judges sat, when the plaintiff accosted him rather violently, and put his hand upon the chair with considerable violence; that some short altercation in words took place between plaintiff and defendant, but that witness did not hear any thing which either of them said, until he heard the defendant say, "Take that for your insolence." And witness at the same time saw the defendant slap plaintiff's face with his open hand; that witness did not know whether any person besides himself heard the words or saw the slap.

The affidavit further stated, that John T. Champlain was sworn as a witness for the defendant on the inquest, and testified that he called on the plaintiff the week preceding the inquest, and told him the defendant was conscious he had acted incorrectly in the business, and that he would make him any apology which might be deemed proper by any respectable friends of plaintiff, and would pay the costs on both sides; but that he declared to the witness that he would not accept of any apology which could be offered.

The affidavit further stated, that almost immediately after the controversy, the deponent felt that he had acted imprudently, and wished to accommodate matters with the plaintiff, and addressed him in court, but he refused to have any conversation with the deponent; that upon the inquest, no evidence of such overture was given to the jury, though the fact was stated to his counsel; and the reason was that he did not know of any witness who could testify to the fact; but that since, he has discovered that Champlain knew the fact. And that one of the plaintiff's counsel, in summing up the cause, laid great stress upon the fact, that no apology nor effort for accommodation was made until near the time of trial; and urged the jury to disregard the offer for an apology which was proved, because it came too late. The counsel also urged to the jury, that the defendant had used an artifice to obtain the chair of plaintiff, in stating that it was for the court, when,

in fact, it was taken by defendant for himself; but he has discovered since the inquest, that alderman Stephen Allen will testify that he asked for the chair for Commodore Chauncey, to whom he wished to give a seat on the judges' bench.

The affidavit of John T. Champlain, stated, that the deponent, having been informed, and believing, that Bell, the sheriff, knew of an irregularity on the part of the jury on the inquest, and that the irregularity was of the nature detailed in the annexed paper, the deponent called on the sheriff with said paper, and requested him to attest to it, if it contained the truth; but that he declined so to do, on the ground that it was improper for him to lend his aid to set aside the verdicts found before him; but said, provided all the jury would request him, in writing, to state the circumstances under which the verdict was given, that would do away all his objections: seven of the jurors had authorized the sheriff to give such statement, but he declined, unless the whole concurred. One of the jurors informed the deponent, that the verdict was made up and given in the manner stated in the annexed paper.

This paper was in the form of an affidavit, to be taken by the sheriff, stating that on the inquest, after the room was cleared of all except the sheriff and the jurors, not being able to agree, one of them proposed, and it was assented to by the rest, that each juror should mark down the amount he was disposed to give as a verdict; and that the twelve amounts should be added together, and divided by twelve, and that the quotient should be the verdict. And that this was accordingly done.

The affidavit of John Benson, stated, that one of the jury, shortly after the inquest, informed him that the mode of arriving at the verdict was as is above stated.

On the part of the plaintiff, his affidavit was read, stating, that either two or three days preceding the 17th of March, the deponent saw the defendant standing near him: that on the morning of that day the deponent was standing near his chair, when the defendant came up to him and asked his permission to sit on it to read a newspaper, and that he would return it before the trial commenced. Deponent did so, and before the court sat defendant returned the chair. The deponent afterwards lent the chair to Samuel Van Wyck, Esq. who was also to return it; that deponent was standing near his chair, when he suddenly saw the defendant and Van Wyck in conversation: the latter got up when defendant proceeded to carry away the chair, which deponent claimed laying his hand upon it, but without violence; that defendant withdrew his hand from the chair, and struck deponent rather violently with his open hand, saying, "That for your insolence, and take notice of it after court—my name is Lawrence, and I live in Park Place." The court was then seated, and as the deponent believes, opened.

The affidavit further stated, that Mr. Champlain, when he first called on deponent, told him that the first he heard of the assault, was on his returning to dinner from court.

The counsel for the defendant, on the first ground, argued, that considering the slight injury sustained, and the immediate offer of accommodation made by the defendant, the damages were excessive.

On the second ground, that there was sufficient evidence to show the irregularity on the part of the jurors on the inquest; and, in the third place, that the inquest ought to be set aside to let in the evidence newly discovered.

It was answered by the counsel for the plaintiff, 1. That the amount of the inquest was but reasonable, as the assault was committed in the very sanctuary of justice, and during the trial of a young man who had put himself in jeopardy by the indulgence of outrageous passions.

2. There was no evidence of the irregularity complained of; for the proof of the fact, if it existed, could not be derived from the affidavits of the jurors, and much less from any hearsay representation emanating from them.

3. The newly discovered evidence did not appear to be material; and the principal part of it was alleged to be within the knowledge of one sworn on the inquest.

The Recorder, for the reasons last mentioned, denied the motion.

After the trial of Goodwin, not less than four Reports were made, or attempted to be made. A seat had been assigned the plaintiff, by one who alone had the right. The business was highly meritorious, calculated to take the bread out of the mouth of one who had been engaged in the same business, as a profession, for several years. But he is *an American*, and, therefore, incompetent to give the public a correct report of an important trial. From the small cases, *little gain can be derived;* but when an important case occurs, in which *something may be made*, it then becomes *highly necessary* that not less than two from the Emerald isle, one teacher and one drunkard should step in, under the especial patronage of some *great man*, and each furnish a report for the edification of the public. The various and contradictory accounts of the same thing must be vastly advantageous: matter is afforded for dispute, and the most pleasing illusions are multiplied:

"Doubtless the pleasure is as great,
"Of being cheated, as to cheat."

The science of law, too, becomes prodigiously improved; inasmuch as the court has the superlative honour of laying down, in various shapes, doctrines never before broached; and, which, though they never entered the heads of our forefathers, will descend to future generations, with the pamphlets and pamphleteers, as matters of great surprize and astonishment. Paper is sold and wasted, the press groans, printers are fed, *if paid,* and booksellers keep *all they can get.*

To conclude—it is believed that the plaintiff, on this occasion, *did better* than either of his competitors. It was well for him to be there; and it is frankly confessed, (at least by one of them,) that he fairly outstripped the whole, and bore off the palm of excellence.

At a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 5th day of *June*, in the year of our Lord one thousand eight hundred and twenty—

BEFORE

The Honourable
CADWALLADER D. COLDEN, *Mayor.*
DAVID BOARD, and GEORGE B. THORP, } *Aldermen.*
P. C. Van Wyck, *Dist. Att.*
John W. Wyman, *Clerk.*

(COUNTERFEITING—SCIENTER—EVIDENCE.)

WILLIAM RILEY'S CASE.

Rodman, *Counsel for the prosecution.*
David Graham and Scott, *Counsel for the prisoner.*

To constitute forgery, it is not necessary that the name of any person in existence should be forged.

Where the prisoner, on passing false paper, alleges it to be that of a particular person in a particular street in a city, if on the trial it appears that such a person resides in that street, some evidence should be produced by the public prosecutor, to show the signature not to be that of such person; but if no such person resides there, some evidence should be produced of the fact.

The prisoner, in February last, was indicted for forging and uttering a check of $100, on the Manhattan company, on the 9th of the same month, purporting to have been drawn by John Williams, with an intent to defraud Peter Nelson, Joseph Watson, and the president, directors and company of that bank.

The prisoner came to Nelson's clothing store, (76 Maiden Lane,) and said that he wanted to purchase a fine suit, and selected a pair of pantaloons. He then said that he had a check, of $100 of Mr. Williams, in Broadway, and offered it to change. Nelson took it to the bank and found that no such person kept an account there; and on his return found the prisoner, who, on being inter-

rogated relative to the check, said, first, that he got it of Williams for work, next, for money due; and finally, that he got it of one he did not know. When the prisoner was told it was bad he said to Nelson, "For God's sake, say nothing about it; and if you will burn it, I will give you a dollar."

On the part of the prisoner, it was testified to by a woman of colour, that she saw him pick up the check in the street. A boy testified that the prisoner came to him and asked him if the check was good. The boy said that he thought it was, and asked him where he got it; to which he made no answer. There was also some evidence of the prisoner's good character.

After Rodman had proved the passing the check, with the circumstances relating thereto, he was about resting the case. The Mayor said that there was not sufficient evidence to put the prisoner on his defence. It was incumbent on the public prosecutor to show either that there was no such person as John Williams in Broadway; or, if there was, that the signature was not his.

Rodman then introduced John Williams, the Merchant tailor, corner of Broadway and Fulton-street, who testified that this was not his signature, though an imitation; and that he knew no other man by his name in Broadway.

The defence was rested principally on the ground, that as the prisoner found the check in the street, he did not know whether it was good or bad.

The Mayor, in the course of his charge to the jury, said that it was not necessary, for the purposes of this prosecution, that the prisoner should have known *to a certainty*, that the check was a forgery: it was sufficient if he had reasonable grounds for believing it to be so. That if he had found the check, it was his duty, instead of attempting to pass it, to return it to the owner. The Mayor also instructed the jury that to constitue the offence, of which the prisoner was charged, it was not necessary that the name of a person in existence should be forged; for that the making a false paper and signing it with a fictitious name, with a felonious intent, was a forgery.

The jury acquitted the prisoner.

SUMMARY FOR JUNE TERM.

GRAND LARCENY.

Thomas Francis, for stealing the goods of Samuel Leggett, was convicted of this offence, and sentenced to the state prison three years.

George Smith, for stealing the goods of Daniel B. Loring, was convicted and sentenced to the state prison five years.

Robert Graham *al.* Thompson, for stealing the goods of James McCabe, was convicted and sentenced five years.

Robert *al.* John Stewart, for the like offence, in stealing the goods of Caleb S. Brown, was convicted. Sentence suspended.

PETIT LARCENY.

Lucretia Johnson, Mary Johnson, Catherine Daniels, David Whitman, William Brown, Henry Thompson, Joseph Van Cleef, John Shinn, William Williams, Edward Olsen, Emmeline Williams, Thomas Blackwell, John Richards, William Johnson, William Crawley, James Handrey, James Burnett, George Linmore, Phebe Sands, Charles Treadwell, John Parris, Margaret Davis Hannah Johnson, and William Ball, were severally convicted of this offence, and the seven first named were sentenced to the penitentiary three years each, the the five following for two years each the six following for twenty-one months each, the eight following for one year each, and the last for three months.